MARTIN YATES III, ET AL.

IBLA 72-119 Decided September 15, 1972

Appeal from a decision by the Santa Fe land office, Bureau of Land Management, rejecting an application for a ten-year renewal of unitized renewal lease LC 050429(b).

Affirmed.

Oil and Gas Leases: Renewals -- Oil and Gas Leases: Twenty-year Leases -- Oil and Gas Leases: Unit and Cooperative Agreements

Upon being committed to a unit agreement, the right of renewal of a 20-year oil and gas lease is superseded by that part of the Mineral Leasing Act, 30 U.S.C. § 226 para. (j) (1970), which provides for extension of unitized leases.

APPEARANCES: A. J. Losee, Esq., of Losee and Carson, for the appellants.

OPINION BY MR. GOSS

Martin Yates III, et al. 1/ have appealed from a decision by the Santa Fe land office, Bureau of Land Management, dated September 8, 1971. The decision, rejecting appellants' request for a second ten-year renewal of their original twenty-year oil and gas lease, held that since the renewal lease had been committed to a unit agreement, the lease remained in effect so long as it was committed to the unit, or, upon elimination from the unit plan, it would continue in effect for the original term of the lease or for two years after its elimination from the unit or the termination thereof, whichever was the longer, and so long thereafter as oil or gas was produced in paying quantities.

On September 18, 1939, oil and gas lease LC 050429(b) was issued for an initial twenty-year period. The lease gave the owners

1/ The other parties being Gladys Dixon; Mary Dorothea Duggan; Florence M. Dooley, Executrix of the Estate of William Dooley, Deceased; and Yates Petroleum Corporation.

the preferential right to renew the lease for successive periods of ten years. An approved extension of the initial term was made until November 18, 1961. On November 1, 1961, the owners of the lease sought a ten-year renewal which was granted. The terms of the renewal lease gave the owners a preferential right to renew for successive periods of ten years upon such reasonable terms and conditions as prescribed by the lessor, unless otherwise provided by law at the expiration of such period. In addition, the lease was made subject to any prior or subsequent unit agreements approved by the Secretary of the Interior.

On July 1, 1963, part of the lease was committed to the West Loco Hills Grayburg No. 4 Sand Unit Agreement. The remainder of the lease was segregated as NM 0437522. On July 6, 1971, appellants filed an application for a second ten-year renewal for the lands within the unit. The application was rejected.

Appellants contend that, as the holders of a ten-year renewal lease in a unitized area, they have the option of either renewing the lease for another ten-year term according to the terms of the renewal lease or allowing the lease to continue without renewal in accordance with the commitment of the lease to the unit agreement.

The issue is whether that part of Section 17(j) of the Mineral Leasing Act, 30 U.S.C. § 226 para. (j) (1970), extending the lease for the life of the unit agreement, is the exclusive method of perpetuating the lease or whether appellants may at their option rely on the right of renewal contained in the lease. Section 1 of the renewal lease provides in part:

> With preferential right in lessee to renew this lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by lessor, unless otherwise provided by law at the expirations of such periods. (Emphasis added.)

Appellants urge that the Assistant Solicitor's decision in Texaco, Inc., 76 I.D. 196 (1969), upon which the land office relied in rejecting the renewal request, was based on an erroneous interpretation of Section 17(j) of the Mineral Leasing Act. The Texaco, Inc. case reversed the Office of Appeals and Hearings, Bureau of Land Management, decision rejecting a request by holders of twenty-year unitized leases to have certain renewal leases declared invalid and to have the original twenty-year leases declared effective and extended for the life of the unit. The Assistant Solicitor's decision traced the evolvement of the pertinent language in Section 17(j) of the Mineral Leasing Act. His conclusion was that by force of law the unitized leases were continued beyond their expiration

date due to the fact that they were committed to a unit and that such continuation was the exclusive method of perpetuating such leases.

The Mineral Leasing Act of 1920, ch. 85, § 17, 41 Stat. 443, provided for twenty-year leases with preferential renewal rights. The Act of March 4, 1931, ch. 506, 46 Stat. 1523, amended the Mineral Leasing Act by adding a proviso:

> Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the department having jurisdiction thereof, unless otherwise provided by law at the time of the expiration of such periods: Provided, That any lease heretofore or hereafter issued under this Act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, or area, or other plan for the conservation of the oil and gas of a single pool or area, * * * shall continue in force beyond said period of twenty years until termination of such plan * * * [2/]

The effect of the above proviso was to extend for an indeterminate period the term of such leases committed to units. Dougherty v. California Kettleman Oil Royalties, 9 Cal. 2d 58, 69 P.2d 155 (1937). The necessary implication is that a twenty-year lease committed to a unit becomes of indeterminate duration and is not, therefore, subject to preferential renewal. Such an interpretation was also made in instructions issued subsequent to the 1931 amendment, Unit Operation of Oil and Gas Permits and Leases under Act of March 4, 1931, 53 I.D. 386, 391 (1931):

> (5) Leases included in a plan approved by the Secretary of the Interior will automatically continue in force beyond the 20-year period for which issued until the termination of the plan.

2/ The Act of August 8, 1946, ch. 916, § 5, 60 Stat. 952, revised the proviso to read:

"Any lease issued for a term of twenty-years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development * * * shall continue in force until the termination of such plan."

This language presently remains unchanged. 30 U.S.C. § 226 para. (j) (1970).

The use of the words "automatically continues" does not equate with the theory that the holder of the unitized lease may elect either to rely on the unitization extension or to exercise his preferential renewal rights. There is no other method of extension provided in the statute.

Appellants contend that limiting a twenty-year lease, with successive ten-year renewals, to the term of the unit agreement may discourage lessees from joining such agreements. While it is recognized that this argument has some validity, the law as enacted prevails. Further, § 226 para. (j) gives the Secretary the power to require that an oil and gas lease be operated under an approved unit plan. 3/ In the same section Congress has provided a limitation as to continuation after elimination from or termination of the unit:

> Any lease which shall be eliminated from any such approved or prescribed plan, * * * and any lease which shall be in effect at the termination of any such approved or prescribed plan, * * * unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

A twenty-year unitized lease thus continues for the life of the unit agreement or if eliminated from the unit, for the original term the lease was to run, or for at least two years following elimination or termination and, in any event, so long thereafter as oil or gas is produced in paying quantities. "Original term" has been construed as referring to the first fixed period of twenty years. Solicitor's Opinion, 63 I.D. 246, 247 (1956). Having entered into the unit agreement during a renewal term, appellants' lease would continue, until elimination from or termination of the unit, and since continuation thereafter is provided for and limited by the statutory language last quoted above, any renewal of the original lease would be of no ultimate effect.

Appellant also urges that departmental policy has been to allow renewals even where the lease has been committed to a unit and that

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3/ 30 U.S.C. § 226 para. (j) (1970) reads in part:

"The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States."

if such policy is to be changed, it should not have retroactive effect. Appellant cites a single such renewal in 1960. Appellants entered into the unitization agreement in 1963. The Solicitor's Opinion as to the meaning of "original term" was announced in 1956. See also Seaboard Oil Company, 64 I.D. 405 (1957), which involved a similar question concerning a noncompetitive oil and gas lease. As discussed in Texaco, Inc., supra, it is clear that the holder of a twenty-year lease does not have a contractual right to receive ten-year renewals, and that the right of renewal is expressly subject to other provisions of the law.

For the reasons stated above, appellants' request for a preferential renewal was properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision below is affirmed.

Joseph W. Goss
Member

We concur:

Martin Ritvo
Member

Edward W. Stuebing
Member